

REMARKS

Request for Continued Examination

Applicants request continued examination of the instant application under 37 C.F.R. 1.114.

Claim Amendments

Claim 39 is amended in this response to more particularly define the invention. In particular, the claim is amended to require feeding a “mixture of antioxidants comprising Vitamin E, Vitamin C and at least one antioxidant selected from the group consisting of alpha lipoic acid, l-carnitine and mixtures thereof” to the companion animal. No new matter has been added. The amended claim is supported in the specification, for example, by working examples 1-3 and by original claims 1, 6 and 7.

Upon entry of this amendment, claims 39 and 44-47 will remain pending in this application. Favorable consideration and early allowance are requested.

Rejection Under 35 U.S.C. §102(e)

Claim 39 stands rejected under 35 U.S.C. §102(e) as anticipated over Hamilton, U.S. Patent No. 6,335,361. The rejection is respectfully traversed in view of the amendments to claim 39 and in view of the remarks set forth below.

Hamilton discusses the use of carnitine and α -lipoic acid, together with coenzyme Q and/or creatine, to alleviate age-related benign memory loss. Nothing in the reference associates benign memory loss with increasing learning ability or inhibiting loss of learning ability as required by amended claim 39. Further, the reference does not discuss feeding an animal “a mixture of antioxidants comprising Vitamin E, Vitamin C and at least one antioxidant selected from the group consisting of alpha lipoic acid, l-carnitine and mixtures thereof” as required by amended claim 39. Thus, it is respectfully submitted that amended claim 39 is not anticipated by Hamilton. Reconsideration and withdrawal of the rejection under 35 U.S.C. §102(e) is respectfully requested.

Rejection Under 35 U.S.C. §103

Claims 44-47 are rejected under 35 U.S.C. §103(a) as being obvious over Hamilton, supra, in view of Harper WO 00/44375. Reconsideration and withdrawal of the rejection is requested.

The principal reference, Hamilton, U.S. Patent No. 6,335,361, discusses the use of carnitine and α -lipoic acid, together with coenzyme Q and/or creatine, to alleviate age-related benign memory loss. Hamilton does not provide sufficient teaching with respect to inhibiting the loss of learning ability or increasing learning ability in an aged pet in need thereof nor does Hamilton provide any teaching with respect to administering the particular amounts of an antioxidant mixture comprising Vitamin E, Vitamin C and/or alpha lipoic acid and l-carnitine for inhibiting the loss of learning ability or increasing learning ability in an aged pet in need thereof as required by instant claims 44-47.

Hamilton defines benign memory loss as being characterized by variable difficulty remembering details of experiences, but by an ease in remembering the experiences themselves. Hamilton draws a distinction between memory impairment and overarching learning ability, expressly stating that benign memory loss “is not progressive and does not increase the risk of developing dementia. See, Col. 1, lines 47-48. See also, Col. 1, lines 28-32 (“[t]his widely experienced so-called benign forgetfulness, or benign senescent forgetfulness, bears no proven relationship to degenerative dementia but may be a forewarning, since there are some similarities”); Col. 2, lines 1-5 (“[t]hus, the AAMI (‘age-associated memory impairment’) diagnosis identifies persons with subjectively and objectively evidenced memory loss without cognitive decline impairing enough to warrant the diagnosis of dementia”). Thus, one skilled in the art would not interpret Hamilton as teaching inhibiting the loss of learning ability or increasing learning ability in an aged pet.

Regardless of anything Hamilton may teach with respect to memory loss, the reference certainly fails to teach any amount of an antioxidant mixture comprising vitamin E, vitamin C and/or alpha lipoic acid and l-carnitine as required by instant claims 44-47. For example, Hamilton does not discuss Vitamin E or Vitamin C as essential or critical for alleviating benign memory loss. In fact, the only mention of Vitamin E and Vitamin C in the cited reference occurs at Col. 10, lines 17-22 wherein Hamilton states that “[a]dditional nutrients are particularly

important in older individuals, including calcium, vitamins B12, B6, C, D or E, folic acid, niacin, iron and zinc. Many of these nutrients have been found to be deficient in the diets of elders and should be appropriately supplemented in nutritional beverages and bars.” Because Hamilton does not discuss Vitamin E and Vitamin C as essential components of the compositions for alleviating benign memory loss, one skilled in the art would not be led to practice the present invention of claims 44-47 wherein particular amounts of Vitamin E, Vitamin C and/or alpha lipoic acid and l-carnitine are administered to aged pets for inhibiting the loss of learning ability or increasing learning ability. Accordingly, it is respectfully submitted that claims 44-47 are not obvious over Hamilton, U.S. Patent No. 6,335,661.

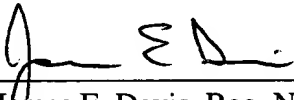
Applicants submit that the deficiencies of the principal reference are not overcome by resorting to the teachings of Harper, WO 00/44375. Harper discusses the use of vitamin E alone or together with vitamin C for overcoming a problem (condition) involving oxidative stress, such as “ageing, cancer, heart disease, atherosclerosis, arthritis, cataracts, inflammatory bowel disease, renal disease, renal failure, neurodegenerative disease and immunity (such as compromised immunity).” See page 13, lines 12-14. Although Harper discusses the use of Vitamin E and/or Vitamin C to overcome conditions of oxidative stress, nothing in the reference discusses inhibiting the loss of learning ability or increasing learning ability in an aged pet in need thereof. Further, Harper does not teach the particular mixtures of Vitamin E, Vitamin C and/or alpha lipoic acid and l-carnitine as required by instant claims 44-47. Thus, one skilled in the art would not be motivated to combine the teachings of Harper with those of Hamilton, and, even if such teachings were combined, the cited references fail to teach all of the limitations of instant claims 44-47. Accordingly, Applicants submit that claims 44-47 are not obvious over Hamilton, U.S. Patent No. 6,335,661 in view of Harper WO 00/44375. Reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) is requested.

Conclusion

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (314) 446-7683.

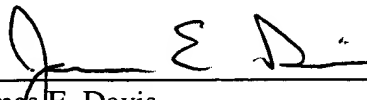
Enclosed is a check in the amount of \$910.00 for the purchase of a one-month extension of time under 37 C.F.R. 1.136(a) and a Request for Continued Examination under 37 C.F.R. 1.114. Further, the Commissioner is hereby authorized to charge any other required fees to Deposit Account No. 08-0750. Accordingly, if there is any other deficiency or overpayment of any fees in connection with this patent application, the Commissioner is hereby authorized to charge such deficiency or credit such overpayment to Deposit Account No. 08-0750.

Respectfully submitted,


James E. Davis, Reg. No. 47,516
Harness, Dickey & Pierce, P.L.C.
7700 Bonhomme, Suite 400
St. Louis, Missouri 63105
(314) 726-7500

CERTIFICATE OF MAILING UNDER 37 CFR § 1.8

I certify that this correspondence is being deposited with the U.S. Postal Service on **May 11, 2005** with sufficient postage as first class mail (including Express Mail per MPEP §512), and addressed to **Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450**.


James E. Davis